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Via Certified Mail –
Return Receipt Requested

October 8, 2015

Bud Nance, Wastewater Collection Supervisor
Dave Hix, Deputy Director - Wastewater
Utilities Department
City of San Luis Obispo
879 Morro Street
San Luis Obispo, CA 93401

Members of the City Council
City of San Luis Obispo
990 Palm Street
San Luis Obispo, CA 93401

Re: Notice of Violations and Intent to File Suit Under the Clean Water Act

Dear Mr. Nance, Mr. Hix and Members of the City Council:

STATUTORY NOTICE

This Notice is provided on behalf of California River Watch ("River Watch") in regard to violations of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1251 *et seq.*, that River Watch alleges are occurring as a result of operations at the City of San Luis Obispo Water Resource Recovery Facility ("WRRF or Facility") including its associated sewage collection system and storm water collection system.

River Watch hereby places the City of San Luis Obispo ("the City), as owner and operator of the WRRF, on notice that following the expiration of 60 days from the date of this Notice, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the City for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Central Coast Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged

violations of permit conditions or limitations set forth in the City's National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions (see CWA § 301(a), 33 U.S.C. § 1311(a)). One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a discharger in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations at the WRRF in the region at issue in this Notice is the Central Coast Regional Water Quality Control Board ("RWQCB-R3").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated

River Watch identifies in this Notice the City's alleged violations of permit conditions or limitations set forth in RWQCB-R3 Order No. R3-2002-0043, amended in March of 2005 by Order No. R3-2014-0033, NPDES No. CA0049224 (*Waste Discharge Requirements for the City of San Luis Obispo, Water Resource Recovery Facility, San Luis Obispo Creek Discharge, San Luis Obispo County*); and alleged violations of State Water Resources

Control Board Orders 2003-0005-DWQ and 2013-0001-DWQ, NPDES No. CAS000004 (*Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)*) of which the City is currently a co-permittee. River Watch alleges the City is violating NPDES No. CAS000004 by discharging sewage from its collection system to the City's Municipal Storm Sewer System ("MS4"). A violation of the NPDES permit is a violation of the CWA.

The City is also a permittee under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. Failure to comply with the Statewide WDR is a major cause of sewage system overflows ("SSOs"). The Statewide WDR is fully incorporated in Order No. R3-2014-0033.

2. The Activity Alleged to Constitute a Violation

River Watch contends that from October 1, 2010 through October 1, 2015 the City violated the Act and the following identified requirements of its Permit with respect to its sewage collection system and MS4. River Watch contends these violations are continuing or have a likelihood of occurring in the future.

a. Collection System Subsurface Discharges Caused by Underground Exfiltration

It is a well established fact that exfiltration caused by pipeline cracks and other structural defects in a collection system result in discharges to adjacent surface waters via underground hydrological connections.

River Watch contends untreated sewage is discharged from cracks, displaced joints, eroded segments, etc. of the City's collection system into groundwater hydrologically connected to surface waters, including tributaries of San Luis Obispo Creek such as the East Fork of San Luis Obispo Creek, Prefumo Creek, Froom Creek, Stenner Creek, Brizziolari Creek (tributary to Stenner Creek), See Canyon Creek, Old Garden Creek (tributary to Stenner Creek), and Davenport Creek. Surface waters become contaminated with pollutants including human pathogens. Chronic failures in the collection system pose a substantial threat to public health.

Studies tracing human markers specific to the human digestive system in surface waters adjacent to defective sewer lines in other systems have verified the contamination of adjacent waters with untreated sewage.

Evidence of exfiltration can also be supported by reviewing mass balance data, "inflow and infiltration" ("I/I") data, video inspection, as well as tests of waterways adjacent to sewer lines for nutrients, human pathogens, and other human markers such as caffeine.

Any exfiltration found from the City's collection system is a violation of the City's NPDES permit and thus the CWA. During the course of discovery River Watch will test surface waters adjacent to sections of the City's collection system and storm water system to determine the location and extent of exfiltration

In 2012, the Department of Liberal Arts and Engineering Studies at Cal Poly of San Luis Obispo issued a study titled "*Preserving Wildlife in San Luis Obispo City by way of San Luis Obispo Creek.*" Based upon this study, waters within city limits have been CWA §303(d) listed as impaired. San Luis Obispo Creek, both above and below Chorro Street, was found to contain high levels of chloride, chlorpyrifos, nitrates, nutrients, sodium, and fecal coliform. The study specifically revealed that the City dumped treated water from the Facility (the Waste Water Treatment Plant) into San Luis Obispo Creek without removing all nitrates.

b. Collection System Surface Discharges Caused by Sanitary Sewer Overflows

Sanitary Sewer Overflows ("SSOs") in which untreated sewage is discharged above ground from the collection system prior to reaching the Facility are alleged to have occurred both on the dates identified in the CIWQS Interactive Public SSO Reports (23 separate violations), and on dates when no reports were filed by the City. The below-listed violations are reported by the RWQCB-R3 and evidenced in the CIWQS SSO Reporting Database Records. River Watch contends these violations are continuing in nature or have a likelihood of occurring in the future.

23 **SSOs** which were reported as reaching a water of the United States, as evidenced in CIWQS and the records of the City:

Releases Reported. As recorded in CIWQS Public SSO Reports, the City has experienced at least 23 SSOs with a combined volume of at least 29,580 gallons. Of the total volume, 17,230 gallons were reported as having reached surface waters, and 8,810 gallons were unaccounted for or discharged to other than a surface water.

Discharges to Surface Waters. River Watch alleges that many of the SSOs reported by the City as having been contained without reaching a surface water did in fact discharge to surface waters, and those reported as partially reaching surface waters did so in greater volume than stated. The claim of full containment is further called into question by the fact that some of the City's SSO reports state the estimated start time of the SSO as later than the time when the reporting party first noticed the SSO. Studies demonstrate that most SSOs are noticed significantly after they have begun. The City reports that some of the discharges reach a storm drain, but fails to determine the accurate amounts which reach a surface water.

The Statewide WDR requires that sewer system operators report SSOs to the CIWQS and include in that reporting an estimate of the volume of any spill, the volume recovered and the volume which reached a surface water. The City's reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

The Statewide WDR requires the City to take all feasible steps and perform necessary remedial actions following the occurrence of a SSO, including limiting the volume of waste discharged, terminating the discharge, and recovering as much of the wastewater as possible. Further remedial actions include intercepting and re-routing of wastewater flows, vacuum truck recovery of the SSO, cleanup of debris at the site, and modification of the collection system to prevent further SSOs at the site.

One of the most important remedial measures is the performance of adequate sampling to determine the nature and the impact of the release. As the City is severely underestimating SSOs which reach surface waters, River Watch contends the City is not conducting sampling on most SSOs.

As examples:

- On February 6, 2014, a spill occurred at 269 High Street in San Luis Obispo (CIWQS Event ID # 803647). The SSO report lists the total spill volume and volume which reached surface waters as 1,800 gallons, none of which was recovered. This incident was noticed and responded to 10 hours and 45 minutes after the spill occurred. San Luis Obispo Creek was impacted by this spill.

- The SSO Report for a spill occurring October 10, 2010 (CIWQS Event ID # 772068) lists a start time of 07:00, agency notification time of 11:45 on October 11, 2010, and operator arrival time of 11:55, 10 minutes after notification time. The estimated spill end time is 11:49, six minutes before operator arrival time. The SSO report listed the total spill volume as 1,300 gallons.

- On December 19, 2010, a spill occurred at Pismo Street an Santa Rosa Street (CIWQS Event ID # 759815). The SSO report lists the estimated spill start time as 08:45, the notification time as 08:30, the operator arrival time as 09:00, and the spill end time as 08:30 on the following day, December 20, 2010. The spill start time indicates that the spill began 15 minutes after the agency was

notified. The SSO Report lists the spill volume as 7,500 gallons.

A careful review of the above indicates that given the unlikely accuracy of the times on these reports, it is difficult to consider the stated volumes as accurate. As the volume of SSOs of any significance is estimated by multiplying the estimated flow rate by the duration of the spill event, the practice of estimating a later than actual start time results in underestimating both the duration and the volume of a spill.

Estimating Volume. River Watch's expert has also determined that the City's method for estimating flow rate underestimates the volume of a SSO. A review of the service records calls into question the City's methodologies for determining the volume of SSOs captured. The City's reports generally do not indicate what method was used to estimate the total volume of the spill, which further calls into question the estimates of volume recovered and volume reaching surface waters. River Watch contends that the City is grossly underestimating the incidence and volume of SSOs that reach surface waters.

Mitigating Impacts. River Watch contends the City also fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The EPA's *'Report to Congress on the Impacts of SSOs'* identifies SSOs as a major source of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the City's SSOs. There is no record of the City performing any analysis of the impacts of SSOs on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore water bodies designated as critical habitat from the impacts of SSOs.

c. Violation of Effluent Limitations

The City's SMRs identify the following **6** violations of effluent limitations imposed under its NPDES permit:

2 Effluent Discharges Exceeding the Permit Limit for Coliform: October 31, 2014

(1) exceeding the Fecal Coliform Seven Sample Median limit of 2.2 MPN/100 mL. (1) exceeding the Total Coliform Seven Sample Median limit of 23 MPN/100 mL, in any 30-Day period

Order No. R3-2014-0033, C. Effluent Limitations 5.(e).

2 Effluent Discharges Exceeding the Permit Limit for Chlorine: August 31, 2012, November 21, 2012

(1) exceeding the Total Residual Instantaneous Maximum limit of 2.0 mg/L (1) exceeding the Total Residual Daily Maximum limit of 0.1 mg/L

Order No. R3-2002-0043, C. Effluent Limitations 5.(f).

1 Effluent Discharge Exceeding the Permit Limit for Total Suspended Solids: December 31, 2010

Exceeding the 30-Day Average limit of 10.0 mg/L

Order No. R3-2002-0043, C. Effluent Limitations 1.

1 Effluent Discharge Exceeding the Permit Limit for Oil and Grease: June 10, 2014

Exceeding the Monthly Average limit of 5 mg/L

Order No. R3-2002-0043, C. Effluent Limitations 2.

d. Violations of Receiving Water Limitations[1]

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[1]The City is required by its NPDES Permit to comply with narrative standards as set forth in the Basin Plan used when testing by numeric standards would be inadequate or impractical. Narrative standards include:

- pH to fall below 7.0 or exceed 8.3, or to change by more than 0.5 units.
- Temperature to increase more than 5° F above receiving water temperature. If, due to the Creek's low temperature as determined by early-morning monitoring, the discharge causes the Creek's temperature increase to exceed the limit, the Discharger must ensure the discharge shall not cause the receiving water to exceed 72.5° F (22.5° C). The Discharger shall monitor the Creek again for hours after discovering the exceedance and shall report both results to the Executive Officer in the monthly self-self-monitoring report.
- Dissolved oxygen concentrations to be depressed below 5.0 mg/L from May through September or 7.0 mg/L from October through April.
- Coloration to cause nuisance or to adversely affect beneficial uses. Coloration attributable to materials of waste origin shall not be greater than 15 units or 10 percent above natural background color, whichever is greater.

The City's SMRs identify the following **47** violations of receiving water limitations imposed under its NPDES permit:

37 Effluent Discharges Exceeding the Permit Limit for pH

December 10, 2011, January 5, 2012, January 6, 2012, January 8, 2012, January 9, 2012, January 10, 2012, January 14, 2012, January 17, 2012, January 18, 2012, January 19, 2012, January 20, 2012, February 11, 2012, February 14, 2012, February 17, 2012, February 21, 2012, February 22, 2012, February 24, 2012, February 27, 2012, February 28, 2012, March 2, 2012, March 14, 2012, March 14, 2012, March 15, 2012, March 16, 2012, September 21, 2012, October 2, 2012, December 5, 2012, February 6, 2013, February 6, 2013, March 4, 2013, September 20, 2013, December 26, 2013, June 05, 2014, January 16, 2014, January 28, 2014, September 25, 2014, September 30, 2014.

(21) Violation Description: Receiving water limit exceeded; pH change exceeded 0.5 units (11) Violation Description: pH difference between RW4 and RW5 not to exceed 0.5 SU Differences were 0.58, 0.65 SU (5) Violation Description: ph Delta from Background limit is 0.50 SU

Order No. R3-2002-0043, D. Receiving Water Limitations 1.

4 Effluent Discharges Exceeding the Permit Limit for Temperature: March 28, 2013, July 16, 2013, November 19, 2013, December 12, 2014

- Taste or odor producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products of aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

- Oils, greases, waxes or other similar materials in concentrations that result in a visible film or coating on the water surface or on objects in the water, that cause nuisance or otherwise adversely affect beneficial uses.

- The discharge of wastes shall not cause concentrations of un-ionized ammonia (NH3) to exceed 0.025 mg/L.

River Watch has found nothing in the public record to demonstrate that the City has monitored for and complied with these narrative standards. River Watch is understandably concerned regarding the effects on San Luis Obispo Creek and the Pacific Ocean.

(3) exceeding the temperature limit of 5° F

Order No. R3-2002-0043, D. Receiving Water Limitations 1.
Order No. R3-2014-0033, V. Receiving Water Limitations A.13.

3 Effluent Discharges Exceeding the Permit Limit for Oxygen: November 2, 2010, July 13, 2012, July 13, 2012

(1) Receiving Water Dissolved Oxygen Limit at RW5 is not to be depressed below 7.0 mg/L from October – April. (1) Exceeding the dissolved oxygen instantaneous minimum of 4.0 mg/L (1) Dissolved Oxygen Instantaneous Minimum limit is 4.0 mg/L and reported value was 0.3 mg/L.

Order No. R3-2002-0043, D. Receiving Water Limitations 1.

1 Effluent Discharges Exceeding the Permit Limit for Color: December 5, 2014

Exceeded the limit of 15 units

Order No. R3-2002-0043, V. Receiving Water Limitations A.1.

2 Effluent Discharges Exceeding the Permit Limit for Ammonia: December 3, 2014, December 12, 2014

Exceeding the limit of 0.025 mg/L

R3-2002-0043, V. Receiving Water Limitations A.15.

e. Nuisance and Impacts to Beneficial Uses

The City's NPDES Permit prohibits the discharge of wastes that lead to the creation of a "nuisance" as defined under the California Water Code. The term "nuisance" is defined in California Water Code § 10305(m) as "anything which meets all of the following requirements: (1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal. (3) Occurs during, or as a result of, the treatment or disposal of wastes."

San Luis Obispo Creek and its tributaries have many beneficial uses as defined in the RWQCB-R3 Basin Plan. SSOs reaching San Luis Obispo Creek or its tributaries cause prohibited pollution by unreasonably affecting the beneficial uses of these waters.

3. The Person or Persons Responsible for the Alleged Violations

The entity responsible for the alleged violations identified in this Notice is the City of San Luis Obispo, as owner and operator of the WRRF and its associated collection system, as well as City employees responsible for compliance with the City's NPDES Permit and the CWA.

4. The Location of the Alleged Violation

The location or locations of the various violations are identified in records created and/or maintained by or for the City which relate to the WRRF and related activities as described in this Notice.

The City of San Luis Obispo is located on State Highway 101 about mid-way between San Francisco and Los Angeles, and 10 miles inland from the Pacific Ocean. It hosts a population of 45,541 (2013 census) and covers about 10.7 square miles in the heart of San Luis Obispo County. San Luis Obispo County Regional Airport provides tourists from around the world convenient access to and from the Central Coast year round. Major attractions in San Luis Obispo County include Cayucos State Beach, Estero Bay, Limekiln State Park, Los Osos Oaks State Reserve, Montaña de Oro State Park, Morro Bay State Park, Pismo State Beach, Oceano Dunes State Vehicle Recreation Area, San Simeon State Park, Hurst Castle, W.R. Hearst Memorial State Beach, and Bishop Peak. Four natural preserves and 25 parks can be found within city limits.

Sewer service is provided to properties within city limits, a few residential properties located just outside the city limits, the San Luis Obispo campus of California Polytechnic State University ("Cal Poly"), and the County airport. The number of service connections, or private sewer laterals, is estimated to be approximately 14,400. The entire sewer lateral connecting a property to the service connection in the street is owned by the property owner. The Cal Poly wastewater system discharges to the City's collection system off Mustang Drive via a 15-inch sewer line. The County airport discharges to the City's collection system at the manhole upstream of the airport lift Station on Broad Street.

The City's collection system includes 136 miles of gravity sewer line pipes ranging in size from 6 inch to 48 inches, 2,900 manholes, and 9 sewage lift stations, installed between 1967 and 2009, with 3 miles of force main ranging from 4-inch to 16-inch pipes. The sewer lines are made of materials such as terra cotta salt glazed pipe, vitrified clay pipe (VCP),

polyvinyl chloride (PVC), and asbestos concrete. The collection system contains18 miles of pipe more than 75 years old, with the oldest pipes exceeding 100 years of age.

In 1988, the City installed a telemetry system or system of alarms on the lift stations on order of RWQCB-R3. In 2013, a Human Machine Interface ("HMI") system was upgraded with current software. Although the City states that the current telemetry system, along with the HMI upgrade, has decreased overflows, SSOs continue to occur.

The WRRF located on Prado Road treats municipal wastewater collected from the City, Cal Poly, and the County Airport. The Facility is currently rated for 5.1 million gallons per day (mgd) for average dry weather flow conditions, and currently treats an average of approximately 3.1 mgd under these flow conditions. Following treatment, the water is either recycled or discharged to San Luis Obispo Creek. The WRRF was originally constructed in 1923 and underwent upgrading and/or expansion in 1942, 1962, 1980, and 1994. In 2006 the water reuse facilities were added.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

The range of dates covered by this Notice is from October 1, 2010 to October 1, 2015. River Watch may from time to time update this Notice to include all violations of the CWA by the City which occur during and after this period. Some violations are continuous, and therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving Notice is California River Watch, referred to herein as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California and offices in Los Angeles, California. The mailing address of River Watch's northern California office is 290 S. Main Street, #817, Sebastopol, CA 95472. The mailing address of River Watch's Southern California office is 7401 Crenshaw Blvd. # 422, Los Angeles, CA 90043. River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch members residing and recreating in the area of the WRRF and the surrounding watershed have a vital interest in bringing the City's operations at the WRRF into compliance with the CWA.

River Watch has retained legal counsel with respect to the issues raised in this Notice. All communications should be directed to:

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RECOMMENDED REMEDIAL MEASURES

I. DEFINITIONS

A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the "National Association of Sewer Service Companies." The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.

B. Full Condition Assessment: A Condition Assessment of all sewer lines in the sewer collection system with the exception of sewer lines located within 200 feet of surface waters.

C. Surface Water Condition Assessment: A Condition Assessment of sewer lines in the sewer collection system located within 200 feet of surface waters, including gutters, canals and storm drains which discharge to surface waters.

D. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
5 – Most significant defect
4 – Significant defect
3 – Moderate defect
2 – Minor to moderate defect
1 – Minor defect

II. REMEDIAL MEASURES

River Watch believes the following remedial measures are necessary to bring the City into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the City's ongoing non-compliance with the CWA:

A. Sewage Collection System Investigation and Repair

1. The repair or replacement, within two (2) years, of all sewer lines in the City's sewage collection system located within two hundred (200) feet of surface waters, including gutters, canals and storm drains which discharge to surface waters, which have been CCTV'd within the past ten (10) years and were rated as Significantly Defective or given a comparable assessment.

2. Within two (2) years, the completion of a Surface Water Condition Assessment of sewer lines which have not been CCTV'd during the past ten (10) years.

3. Within two (2) years after completion of the Surface Water Condition Assessment above, the City will:

   i. Repair or replace all sewer lines found to be Significantly Defective;

   ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the City's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;

   iii. Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Surface Water Condition Assessment are to be re-CCTV'd every five (5) years to ascertain the condition of the sewer line segment. If the City determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the City shall complete such repair or replacement within two (2) years after the last CCTV cycle.

4. Beginning no more than one (1) year after completion of the Surface Water Condition Assessment, the City shall commence a Full Condition Assessment to be completed within seven (7) years. Any sewer pipe segment receiving a rating of 4 or 5 based on the PACP rating system shall be repaired or replaced within three (3) years of the rating determination.

5. Provision in the City's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years. Said program to begin one (1) year following the Full Condition Assessment described above.

B. SSO Reporting and Response

1. Modification of the City's Backup and SSO Response Plan to include in its reports submitted to the CIWQS State Reporting System the following items:

   i. The method or calculations used for estimating total spill volume, spill volume that reached surface waters and spill volume recovered.

   ii. For Category I Spills, a listing of nearby residences or business owners who have been contacted to attempt to establish the SSO start time, duration, and flow rate, if such start time, duration, and flow rate have not been otherwise reasonably ascertained, such as from a caller who provides information that brackets a given time that the SSO began.

   iii. Taking of photographs of the manhole flow at the SSO site using the San Diego Method array, if applicable to the SSO; or other photographic evidence that may aid in establishing the spill volume.

2. Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated wastewater enters surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli and a CAM-17 toxic metal analysis. The City shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the City will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.

3. Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the City's website to the CIWQS SSO Public Reports. Notification to be given by the City to all customers and other

members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

4. Performance of human marker sampling on creeks, rivers, wetlands and areas of San Luis Obispo Creek adjacent to sewer lines, to test for sewage contamination from exfiltration.

C. Lateral Inspection/repair Program

1. Creation of a mandatory, private sewer lateral inspection and repair program triggered by any of the following events:

i. Transfer of ownership of the property if no inspection/replacement of the sewer lateral occurred within ten (10) years prior to the transfer;

ii. The occurrence of two (2) or more SSOs caused by the private sewer lateral within two (2) years;

iii. A change of the use of the structure served (a) from residential to non-residential use, (b) to a non-residential use that will result in a higher flow than the current non-residential use, and (c) to non-residential uses where the structure served has been vacant or unoccupied for more than three (3) years;

iv. Upon replacement or repair of any part of the sewer lateral;

v. Upon issuance of a building permit with a valuation of $25,000.00 or more; or,

vi. Upon significant repair or replacement of the main sewer line to which the lateral is attached.

D. Narrative Standard Compliance

The City shall develop and implement a means for verifying compliance with the narrative standards in its NPDES permit, specifically Section V. Receiving Water Limitations, and Section A. Surface Water Limitations.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and/or recreate in the affected community. Members of River

Watch use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource are specifically impaired by the City's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to $37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. See also 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** "notice period" to promote resolution of disputes. River Watch strongly encourages the City to contact River Watch within **20 days** after receipt of this Notice Letter to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating that the City is in compliance with the strict terms and conditions of its MS4 WDR and the CWA, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

Jack Silver

JS:lhm

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